

No. 14/13/87-5Lab./3.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Director, Department of Social Welfare Haryana, Chandigarh *v.* Dilbag Singh.

IN THE COURT OF SHRI P. L. KHANDUJA,  
PRESIDING OFFICER, INDUSTRIAL TRIBU-  
NAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 754 of 1992.

between

SHRI DILBAGH SINGH, S/O SHRI RATI RAM.  
V.P.O. MAHARANA, DISTRICT ROHTAK,  
... Workman.

AND

THE MANAGEMENT OF DIRECTOR,  
DEPARTMENT OF SOCIAL WELFARE, HAR-  
RANA, CHANDIGARH. (2) CHIEF DEVELOP-  
MENT PROJECT OFFICER, DIGHAL,  
ROHTAK.

Present :

Shri S. K. Nehra, Authorised representa-  
tive, for the workman.

Shri S. C. Verma, A.D.A., for the manage-  
ment.

#### AWARD

In exercise of powers conferred by Sub-  
Clause (c) of Sub-Section (1) of Section 10 of the  
Industrial Disputes Act, 1947, the Governor of  
Haryana has referred the following dispute, bet-  
ween the parties, named above, to this Court for  
adjudication,—vide Labour Department Endorse-  
ment No. OV/Roh/124-92/32121—126, dated 9th  
July, 1992 :—

Whether the termination of services of  
Shri Dilbagh Singh is justified and in  
order ? If not, to what relief he is  
entitled ?

2. The workman and the management were  
summoned. The workman appeared relied upon  
demand notice under Section 2-A of the Industrial  
Disputes Act which is to the effect that the applicant  
was working with the employer since 26th  
April, 1991 as chowkidar on daily wages at the  
rate of Rs. 31 per day and has not given any  
chance of complaint during his tenure but the

management terminated the service of the work-  
man on 31st December, 1991 without assigning  
any reason, therefore, the above said termination  
is illegal unwarranted and against the oppor-  
tunity of natural justice. The workman appoint-  
ed on the said post and was permanent post, thus  
entitled to be heard before giving any sort of  
punishment. At the time of termination no  
notice was given to the workman and no enquiry  
was held against the workman by the manage-  
ment and no notice was sent to the Government  
in prescribed form, no charge-sheet was given to  
the workman, the workman was not paid retrench-  
ment compensation and in this way the manage-  
ment have contravened Section 25-F of the Indus-  
trial Disputes Act. Some junior persons to the  
workman are also working in the office of the  
management and has not adopted the procedure  
of first come last go and this way the  
management have contravened the Section 25-G&H  
of the Industrial Disputes Act hence this demand  
notice was filed.

3. The management appeared and filed the  
written statement that the claimant has no locus  
standi to file the claim statement; the claimant  
does not come in the definition of workman; the  
management is not covered by the Industrial Dis-  
putes Act; the Court has no jurisdiction to try  
the present case. The applicant was appointed  
as chowkidar on daily wages at D.C. Rates on  
24th April, 1991 for three months by the manage-  
ment. The applicant joined the post on 26th  
April, 1991. Again the services of the applicant  
were extended till further order,—vide respon-  
dent order dated 19th July, 1991 in continuation  
of the above order. Moreover there is no post  
of chowkidar on the Establishment of C.D.P.O.,  
Dighal strength where the applicant was posted.  
Therefore, no notice or enquiry was required and  
such the department has not contravened in Sec-  
tion 25-F of the Industrial Disputes Act as has  
been done and hence claim statement liable to  
be dismissed.

4. Replication was filed by the workman.  
On the pleadings of the parties, the following  
issues were framed :—

(1) As per terms of reference ?

(2) Whether Industrial Disputes Act is not  
applicable to the management, if so, to  
what effect ? OPM.

(3) Relief ?

5. My findings on the above issues with reasons thereof are as under :—

**ISSUE NO. 1 :**

6. The workman has come into witness box as WW-1 and closed his evidence. The management has examined Shri Shyam Sunder, Assistant C.D.P.O., Dighal as MW-1 and closed the evidence.

7. The learned A.D.A. for the management brought to my notice writing in Ex. M-4 the order passed by the Director, Social Welfare, Haryana to all the Project Officers Bal Vikas and others institutions. Directors gave the order to all the respondent and others institutions to terminate the services of Sewadar, Chowkidar. Sweeper-cum-chowkidar who are on daily wages. The learned A.D.A. for the management thus made submission that the department has no alternate except to remove the application from job. It is also proved from Ex. M-3 copy of order appointing the workman on daily wages by the management. Ex. M-2 is the photostate copy of Dilbagh Singh to C.D.P.O. Dighal to get the joining report on 26th April, 1991 as ordered by the Director, Social Welfare, Haryana. Ex. M-1 is order passed by Deputy Director, Social Welfare Department, Haryana, Chandigarh for appointment of applicant for three months on daily wages. The submission of the learned A.D.A. for the management is that as there is no order from Director, Social Welfare to extend the service of the applicant.

8. It is proved from the evidence of the workman and from written statement of the respondent on this behalf that services of the workman were brought to end without compliance with Section 25-F of the Industrial Disputes Act. The plea of respondent is that the applicant was appointed as Chowkidar on daily wages to D.C. rates on 24th April, 1991 for three months and his services were extended till further orders,—vide respondent order dated 19th July, 1991. The plea of the respondent is that there is no post of chowkidar in the establishment of C.D.P.O., Dighal. When the applicant was posted. Ex. M-4 is referred by the learned A.D.A. for the management which was issued by the Director, Social Welfare to all Subordinate Officers that the pay of the Peons/Chowkidar, watermen, who were posted on daily wages or retetting the money for payment from contingencies and therefore, contingencies are being effected, as all the appointment does not seems according to the instructions issued by the employment department hence all the peons, chowkidars.

watermen, sweeper-cum-chowkidars are ordered to be retrenched.

9. Now the question is whether the workman/applicant had served the department for about 240 days or more than 240 days in a year or not. The workman was appointed on 26th April, 1991 as chowkidar and services were terminated on 31st December, 1991. As the workman has made the assertion in the demand notice under Section 2-A and as made claim in the claim statement that he has served as chowkidar with the respondent department from 28th April, 1991 to 31st December, 1991. If the all days are counted it is proved that the workman/applicant had worked for not more than 220 days in a year and if a person have served the department for less than 240 days in a year, and the services of all the person appointed by the respondent/management were terminated because of the order of the Director, Social Welfare. The workman has made the statement after termination other persons were appointed but he could not tell the name and suggestion was put to him that after his termination was any other persons appointed ? Shyam Sunder MW-1 who is Assistant appeared and made the statement that as there was no need of the services of the applicant by the department, he was removed from the job. No suggestion was made to him that after termination of the services of the workman/applicant, the other person were appointed in his place. As such when the respondent/department has not appointed any other person after termination of the applicant from services of Dilbagh Singh has not served for 240 days, his termination does not come as retrenchment, as defined in Section 2-A of the Industrial Disputes Act and which does not attract with Section 25-F of the Industrial Disputes Act. Hence, I, decide this issue against the workman.

**ISSUE NO. 2 :**

10. This issue is not pressed or argued by the parties. Hence this issue is decided against the management.

**ISSUE NO. 3 (RELIEF) :**

11. In view of my findings on the above issues reference petition of the workman fails and is dismissed. The reference is answered and returned accordingly, with no orders as to costs. Dated, the 19th December, 1994.

P. L. KHANDUJA,  
Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

Endorsement No. ref. 754-92/3007, dated the 22nd December, 1994.

Forwarded, in (four copies), to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh.

P. L. KHANDUJA,  
Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

No. 14/13/87-6 Lab./4.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XLV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of S.D.O., Sub-Division No. 9, Canal Lining Department *v.* Dhup Singh IN THE COURT OF SHRI P. L. KHANDUJA PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 128 of 1994.

between

SHRI DHUP SINGH, S/O SHRI HARI SINGH VILLAGE AND P.O. SUDKEN KHURD, DISTT. JIND.

—Workman.

and

THE MANAGEMENT OF S.D.O., SUB-DIVISION NO. 9, CANAL LINING DEPARTMENT, NARWANA, DISTT. JIND.

Present :

Shri V. S. Singal, Authorised Representative, for the workman.

Shri S. C. Verma, A.D.A., for the management.

#### AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—vide Labour Department Endorsement No. ID/30961-66, dated 21st September, 1993 :—

Whether the termination of services of Shri Dhup Singh is justified and in order ? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed

the claim statement that he was appointed as workcharged employee on 11th November, 1979 by the respondent and applicant worked upto 1st August, 1989. The scale of the post was Rs. 300—430, subsequently revised Rs. 750—940 with effect from 1st January, 1986. The services of the applicant were terminated without any notice and charge-sheet by the respondent. The provision of Section 25-F and G of the Industrial Disputes Act, 1947 were not complied before terminating the services of the applicant. The termination of that account amounts to retrenchment. The applicant has got clear record of service and he did not give any cause of complaint to supervisors. Hence this claim was filed.

3. The management has filed the written statement that the present applicant is barred by provision of Section 2(00) BB of the Industrial Disputes Act, 1947, as the services of the applicant was totally temporary, contractual and casual on daily wages and only for a fixed period. He was never kept as regular employees of the Department. So he can not take advantage of Section 25 clause of Industrial Disputes Act. The application is badly barred by the period of limitations. The workman was not employed on 11th November, 1979 but he was engaged on 24th October, 1984 on daily wages basis within the provision of the departmental rules concerned under D.F.R. 7.12 to 7.13 Haryana P.W.D. Code 4.1 to 4.4 and Haryana Schedule of rates Chapter-I daily wages. The appointment of the workman was in the capacity of a casual labour on purely daily wages and he was kept for a very short period i.e. during the closure of the channel for assisting the construction activity. At the time as such periods the petitioner was kept alongwith other such workers depending upon the requirement of work strictly on daily wages basis. The petitioner was not removed from the job and he left the job at his own will and hence the claim petition be dismissed with costs.

4. Replication was not filed by the workman. On the pleadings of the parties, the following issues were framed :—

(1) Whether the termination of services of Shri Dhup Singh is justified and in order ? If not, to what relief he is entitled ?

(2) Relief,

5. My findings on the above issues with reasons thereof are as under :—

ISSUE NO. 1 :

6. The workman has come into witness-box as WW-1 and closed his evidence. The management has examined Shri M. C. Goyal S.D.O. as MW-1 and closed the evidence.

7. Shri M. C. Goyal MW-1 has admitted that he was appointed as Beldar on 24th October, 1980 on the casual labour as daily wager on D.C. rates and he worked upto 26th April, 1988 with breaks. The workman has himself left the job on 28th August, 1988. There is no need of the applicant on work and as the work was not on permanent basis. Shri M. C. Goyal MW-1 admitted that applicant had worked for 256 days during 12 calendar months and as denied the suggestion that department has retrenched him. Further he admitted that the applicant had never gave in writing his determination to leave the job. He also admitted that after termination, other persons were appointed and the applicant was removed from job without any notice or paying the notice pay and retrenchment compensation.

8. The workman has made the statement that he was removed from job on 1st August, 1988 by the management and without paying him any notice pay or retrenchment compensation. He denied the suggestion that he had himself left the job. It is proved from the statement of Shri M. C. Goyal, S.D.O. respondent Department that workman had worked for 256 days during last 12 calendar months prior to 26th April, 1988.

9. The question which was raised by the learned A.D.A. for the management that the workman is required to prove that he had worked for 240 days in calendar year and not in 12 calendar months. I have gone through the Industrial Disputes Act and I do not find if the workman is required to prove to have worked for 240 days in any calendar year. He required to prove that he has work for 240 days in preceding calendar year and which on suggestion admits that he had worked 256 days.

10. From the statement of MW-1 it is proved that as the workman had worked for 240 days. It is in 12 calendar months and services were retrenched without compliance of Section 25-F. Thereafter retrenchment other workers were appointed which is clearly violation of Section 25-G and H of the Industrial Disputes Act. For the reason I hold that the workman could not be

terminated and I decide this issue in favour of the workman.

ISSUE NO. 2 (RELIEF) :

11. In view of my findings on the above issues I accept the claim statement of the workman and I direct the management to re-employ the workman with continuity of service but with 50 per cent (FIFTY) of back wages. The reference is answered and returned accordingly. The parties are left to bear their own costs.

The 19th December, 1994.

P. L. KHANDUJA,  
Presiding Officer,  
Industrial Tribunal/Labour  
Court, Rohtak.

Endorsement No. Reference 128-94/3008, dated the 22nd December, 1994.

Forwarded, (four copies), to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA,  
Presiding Officer,  
Industrial Tribunal/Labour  
Court, Rohtak.

No. 14/13/87-6 Lab./5.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Chief Administrator, Haryana State Agriculture Marketing Board 6/6 Panchkula Distt. Ambala v. Om Parkash. IN THE COURT OF SHRI P. L. KHANDUJA. PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 214 of 1994.  
between

SHRI OM PARKASH, S/O SHRI RAM PAL.  
VILLAGE KOLEKHAR, P. O. KALAYAT.  
DISTT. JIND, —Workman.

and

THE MANAGEMENT OF M/S CHIEF ADMINISTRATOR, HARYANA STATE AGRICULTURE MARKETING BOARD, 6/6, PANCHKULA, DISTT. AMBALA. (2) MARKET COMMITTEE NARWANA, DISTT. JIND.

Present :

Shri M. C. Bhardwaj, Authorised Representative, for the workman.

None for the management (*ex parte*).

## AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department Endorsement No. ID/Hissar/BHI-30-90, 14569-75, dated 30th March, 1990 :—

Whether the termination of services of Shri Om Parkash Work Mistry is justified and in order ? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and relied only on his demand notice under Section 2-A of the Industrial Disputes Act, 1947, which is to the effect that the applicant was appointed on 7th January, 1986 on the pay of Rs. 100 and allowances by the respondent/management and the workman had worked upto 30th March, 1989. The workman was getting Rs. 500 P.M. It is when he was removed from job alongwith allowances. The management terminated his services without compliance of Section 25-F of the Industrial Disputes Act as he was not served the notice and was not paid notice pay or retrenchment compensation. After his removal S/Shri Balwan Singh, Baram Dass, Hosiar Singh have been appointed who are junior to him namely Balwan Singh, Bram Dass, Hoshiar Singh are still in the service and junior to him. Hence this demand notice was filed.

3. The management has filed the written statement that reference is bad in law on account of misjoinder and non joinder of necessary parties. The respondent No. 1 as well as respondent No. 2 are not the employer of the applicant. It is Executive Engineer, HSAM Board, Karnal, Rohtak under whom the applicant worked from time to time and has not been made party to the present proceedings; Executive Engineer is not an industry nor the applicant would come under the definiton of workman. After collecting records from Executive Engineer, HSAM Board, Karnal and Rohtak it has come to light that was some different works at difference times for raising of road within the jurisdiction of Executive Engineer Karnal and Rohtak. The applicant was appointed for specific period and the alleged termination of services of the workman as result of non-renewal of contract between the employer and the employee on its expiry does not arise. Furthermore the alleged termination on account of stipulation in

that behalf is contained in the contract of employment. In this view of the matter there is no retrenchment so far as the present case is concerned. Hence the claimant is not entitled to any relief.

4. Replication was not filed by the workman. On the pleadings of the parties, the following issues were framed :—

- (1) As per terms of reference ?
- (2) Whether the reference is bad for non-joinder of parties ?
- (3) Whether the respondent is not industry?
- (4) Relief

5. My findings on the above issues with reasons thereof are as under :—

## ISSUE NO. 1 :

6. The workman has come into witness-box as WW1 and closed his evidence. The management did not appear and hence proceeded against *ex parte*.

7. The workman has made statement that he was appointed on 7th January, 1985 and worked upto 30th March, 1989,—*vide* appointment letter Ex. W-1 to Ex. W-3 but he was never given any notice and not paid any notice pay or retrenchment compensation and on his place Dalbir Singh and Hosiar Singh were appointed. The management has examined Shri Zile Singh, Secretary market Committee, Narwana as MW-1 who deposed that applicant was never appointed as employee of the Market Committee. Ex. W-1 to Ex. W-3 are the photostate copies of the appointment letters issued by the Executive Engineer, HSAM Board, Karnal. The workman had filed the claim statement against the Chief Administrator, HSAM Board, Panchkula Distt. Ambala. The reference petition received by me against Chief Administrator, Haryana State Agriculture Marketing Board Panchkula and Market Committee, Narwana. The documents Ex. W-1 to W-13 do show that the applicant was appointed by Executive Engineer, HSAM Board, Karnal.

8. From the pleadings of the parties and evidence examined by the parties and for documents produced in evidence which are Ex. W-1 to W-13 it is proved that the workman had been working with the respondent No. 1 though not with Market Committee, Narwana which is respondent No. 2 but the services were terminated against the provision of Section 25-F of the Industrial Disputes Act and 2(oo) of the Industrial Disputes Act, which is illegal and can not be sustained. Hence I decide this issue in favour of the workman.

## ISSUES NO. 2 AND 3 :

9. Both these issues are not pressed or argued. Hence I decide both these issues against the management.

## ISSUE NO. 4 (RELIEF) :

10. In view of my findings on the above issues I accept the reference petition and claim statement of the workman and I direct respondent No. 1 to re-employ the workman on the job with continuity of service but with 50 (FIFTY) of back wages. The reference is answered and returned accordingly, with no orders as to costs. Dated 13th December, 1994.

P. L. KHANDUJA,  
Presiding Officer,  
Industrial Tribunal/Labour  
Court, Rohtak.

Endorsement No. Reference 214-94/2974, dated the 15th December, 1994.

Forwarded, (four copies), to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA,  
Presiding Officer,  
Industrial Tribunal/Labour  
Court, Rohtak.

No. 14/13/87-6Lab./12.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s The Rohtak Central Co-op. Bank Ltd., Rohtak *vs.* Kila Singh.

IN THE COURT OF SHRI P. L. KHANDUJA,  
PRESIDING OFFICER, INDUSTRIAL TRIBU-  
NAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 26 of 1991.

*between*

SHRI KILA SINGH, SON OF SHRI MAM RAJ,  
V.P.O. PHARIPUR, DISTRICT ROHTAK,

... Workman.

*and*

THE MANAGEMENT OF M/S THE ROHTAK  
CENTRAL CO-OPERATIVE BANK LTD.,  
ROHTAK.

Present :

Shri V. S. Singal, authorised representa-  
tive, for the workman.

Shri B. M. Lal, authorised representative.  
for the management.

## AWARD

In exercise of powers conferred by Sub-  
Clause (c) of Sub-Section (1) of Section 10 of the  
Industrial Disputes Act, 1947, the Governor of  
Haryana has referred the following dispute bet-  
ween the parties, named above, to this Court for  
adjudication,—vide Labour Department Endorse-  
ment No. SOV/ID/Roh/146-90/5266—71, dated  
21st February, 1991 :—

Whether the termination of services of  
Shri Kila Singh, is justified and in  
order ? If not, to what relief he is  
entitled ?

2. The workman and the management were  
summoned. The workman appeared and filed the  
claim statement that he was appointed as  
Guard,—vide office order Endorsement No. Estt/  
1/18260-63/C3R, dated 12th December, 1988 and  
was posted in Branch office Chhara. The appli-  
cant was in continuous services since 12th Decem-  
ber, 1988 as guard and has thus completed 240  
days. The applicant could not be legally termi-  
nated. The requirement 15 years military ser-  
vice is basically wrong and illegal. The appli-  
cant is Ex-serviceman. The applicant was quit  
fit for the post of guard and was as such given the  
duty of the guard. The order dated 10th May,  
1990, of the respondent is wrong and illegal. The  
applicant was given no opportunity to explain  
position so the order of removal of service is  
wrong and illegal. Hence this claim petition was  
filed that he be reinstated with full back wages  
and with continuity of service and the order  
dated 10th May, 1990 be quashed.

3. The written statement is filed by the res-  
pondent taking the pleas that workman was  
appointed as guard on daily wages on 12th  
December, 1988 and not completed 240 days but  
there is no requirement of 15 years of military  
service for the post of Guard. However, the  
workman was not found fully qualified for the  
post of a guard and his services were rightly and  
legally terminated after compliance of Section  
25-F of the Industrial Disputes Act, 1947. Fur-  
ther, his case was sent up to the Registrar, Co-  
operative Societies, Haryana for relaxation of  
essential qualification which was declined. Hence  
there was no malice on the part of the manage-  
ment against the workman and if he could not  
be regularised, it is the because he lacked the  
basic qualification for the post. Hence the claim  
statement be dismissed.

4. Replication was not filed by the workman. On the pleadings of the parties, the following issues were framed :—

(1) As per terms of reference ?

(2) Relief ?

5. My findings on the above issues with reasons thereof are as under :—

ISSUE NO. 1 :

6. The workman has come into witness box as WW-1 and closed the evidence. The management has examined Ram Kishan as MW-1 and closed the evidence.

7. Shri Ram Kishan has made the statement that applicant was appointed on daily wager basis as guard,—vide Ex. M-1 and it is necessary that no guard should have less than five years of military service but the workman was having three years of military service and thus the Registrar was written after meeting and resolution passed on 26th December, 1988 (copy of resolution Ex. M-2). Registrar written a letter copy of which is Ex. M-3 but no order was received from Registrar and hence his service were brought to an end,—vide order Ex. M-3. While relieving the applicant from service he was paid retrenchment compensation and advance pay which is mentioned in termination letter Ex. M-4 Ram Kishan MW-1 admitted that it is not mentioned in the condition of service that five years service is a must before appointment. It was not told to the workman regarding five years terms.

8. It is proved from the evidence of Ram Kishan that the applicant was appointed as guard but it is not given in the appointment letter or he was not told orally that the person have been five years services is able to serve as guard. On this point of view the learned authorised representative for the workman referred case law. It is given in the Ex. Mark-A qualifications for the employees for recruitment/promotion to the services in the Common Cadre. Post of gunman atleast 5 years service in Army is mention at serial No. 7.

9. The learned authorised representative for the workman made submission that even if the workman had completed 2-3 years service but as he is a ex-serviceman, he is entitled for the said post and as placed reliance of Geeta Rani

versus State of Punjab and others, cited in 1991 (1) RSJ, 561, holding that petitioner had on that date requisite qualifications—Completed more than 2 years of service is entitled to regularisation. So, I have gone through the judgement and it is not given in there was condition of 5 years of prior service in military and hence I hold that this is not applicable to the facts of this case.

10. The reference was also placed on Manju Bala versus State of Punjab through Secretary, Education, Punjab, Chandigarh and others, cited in 1994 (2) RSJ, 163, holding to the effect that at the time of motion hearing, *status quo* in regard to services was maintained meaning thereby that the petitioners continued to remain in service. Now when the writ petitions came up for hearing before me, it was pointed out by the learned counsel for the parties that the matter is issue stands concluded by a full Bench decision of this Court in Neelam Kumari versus State of Punjab and others, 1993 (1) RSJ, 327, in which it was held that the derecognition of such certificate would be prospectively and would not apply retrospectively. I have gone though the judgement and I do not find if this judgement is also not applicable to the facts of this case.

11. The reliance was also placed in case Smt. Bhagwati Devi and others versus Delhi State Mineral Development Corporation, cited in AIR, 1990 (S.C.) 371, holding that petitioner are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said post. This judgement of also no help because this judgement relates to a case of equal pay for equal work which is not in the present case.

12. The learned authorised representative for the management made submission that workman was retrenched because he was posted for 89 days only which are proved from Ex. M-6 to M-8 and it is prove that he was paid Rs. 1,000,—vide Ex. M-8. The workman had appeared in the witness box but any question was put to him regarding termination and condition in the employment and the workman was never paid any retrenchment compensation. It has not been stated so by MW-1. Ex. M-2 is annexure regarding qualification for the employees for recruitment or promotion in services in common cadre and it is given that Gunman should have been

at least five years service in army. It is true that document is not having any force. There should have been four more page but which are not with Ex. M-2.

13. The question is not as to what is written in Ex. M-2. The question is whether the workman had completed more than 240 days in a year. Now the condition that regarding five years service of workman military service is compulsory. I am of view that this condition is not disproved any thing that the service of the workman who had already complete three year of service. Thus I am of the view that even if the workman had admitted three year service not five years service, he is entitled to the job and can not retrenched as such I decide this issue in favour of the workman against the management.

ISSUE NO. 2 (RELIEF) :

14. In view of my findings on the above issue I accept the reference petition/claim statement filed by the workman and hold that the workman is entitled to the job in continuation of service but with 50 per cent (FIFTY) of back wages. The reference is answered and returned accordingly. However, the parties are left to bear their own costs.

Dated, the 12th December, 1994.

P. L. KHANDUJA,  
Presiding Officer,  
Industrial Tribunal/Labour Court.  
Rohtak.

Endorsement No. ref. 26-91/2970, dated the 15th December. 1994.

Forwarded, in duplicate, to the Secretary to Government Haryana, Labour & Employment Departments. Chandigarh.

P. L. KHANDUJA.  
Presiding Officer,  
Industrial Tribunal/Labour Court.  
Rohtak.

No. 14/13/87-6 Lab./13.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, in

respect of the dispute between the workman and the management of M/s President, The Lon Co-operative Credit and Service Society Ltd., Lon District Jind vs. Satbir Singh.

IN THE COURT OF SHRI P. L. KHANDUJA,  
PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 207 of 1994.

between

SHRI SATBIR SINGH, SON OF SHRI NIHALA,  
VILLAGE LON, ... Workman.

and

THE MANAGEMENT OF M/S PRESIDENT,  
THE LON CO-OPERATIVE CREDIT & SERVICE  
SOCIETY LTD., LON DISTRICT JIND.

Present :

Shri V. S. Singal, authorised representative,  
for the workman.

None, for the management (*ex parte*).

AWARD

In exercise of powers conferred by Sub-Clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, names above, to this Court for adjudication,—*vide* Labour Department Endorsement No. ID/Bhiwani/22-94/17052-57, dated 2nd May, 1994 :—

Whether the termination of services of Shri Satbir Singh is justified and in order ? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that he was appointed by the management on 22nd November, 1988 as Salesman and had never given any chance of any complaint but the management terminated his services on 6th February, 1990 without assigning any reason or reasonable cause. The workman has completed more than 240 days in a year. therefore, he is entitled to be heard before giving any sort of punishment to him, therefore, the

above said termination is illegal, unwarranted, *mala fide*, arbitrary and against the provisions of law and also against the principle of natural justice. Such type of termination also amount to unfair labour practice. At the time of termination no notice was given to the workman, no enquiry was held by the management, no seniority list was displaced at the time of termination no notice was given to the workman, no notice was sent to the Government in the prescribed form, no charge-sheet was issued to the workman, therefore, the management have been contravend Section 25-F of the Industrial Disputes Act and mandatory provisions of chapter V-A of the Industrial Disputes Act. The management have also appointed some other junior person in place of workman, the management have not adopted the mandatory procedure "first come last go" in this way, therefore, the management have contravend Section 25-G & H of the Industrial Disputes Act. The workman requested to the management many a time but to no effect, hence this claim petition was filed by the workman that he be reinstated with full back wages alongwith continuity of service and also alongwith resultant benefits.

3. Shri Ram Niwas was present on behalf of the management but he was not present on 7th October, 1994 and hence the management was proceeded against *ex parte*. In *ex parte* evidence the workman has come into witness box as WW-1 and closed his evidence.

4. The workman has made statement that he was appointed on 22nd November, 1988 but the management terminated his services on 6th February, 1990 without giving any notice to him or retrenchment compensation.

5. It is proved from the statement of workman as he was had worked with he respondent, management for more than 240 days in the last 12 calendar months but he was retrenched without making compliance of Section 25-F of the Industrial Disputes Act, said retrenchment becomes ineffective being an *ultra-vires* and the order of termination of services is held is illegal and *null* and *void* not effective. As such I accept the reference petition/claim statement and I direct the management that workman is entitled to the job with continuity of service but with 50 per cent (Fifty) of back wages with the respondent,

The reference is answered and returned accordingly. The parties are left to bear their own costs.

Dated, the 7th December, 1994.

P. L. KHANDUJA,

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

Endorsement No. ref. 207-94/2967, dated the 15th December, 1994.

Forwarded, (four copies), to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

No. 14/13/87-6Lab./15.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. M. D. Rohtak Central Co-operative Bank Ltd., Rohtak *vs.* Rajesh Kumar.

IN THE COURT OF SHRI P. L. KHANDUJA,  
PRESIDING OFFICER, INDUSTRIAL TRIBU-  
NAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 33 of 1992.

between

SHRI RAJESH KUMAR, SON OF SHRI BALBIR  
SINGH, V.P.O. LADPUR, DISTRICT ROHTAK,  
... Workman.

and

THE MANAGEMENT OF M/S M. D. ROHTAK  
CENTRAL CO-OPERATIVE BANK LTD.,  
ROHTAK.

Present :

Shri B. S. Suhag, authorised representative  
for the workman.

Shri Sunil Katyal, authorised representa-  
tive for the management.

## AWARD

In exercise of powers conferred by Sub-Clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—vide Labour Department Endorsement No. SOV/Roh/144-91/5752, dated 24th January, 1992 :—

Whether the termination of services of Shri Rajesh Kumar is justified and in order. If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and not filed claim statement but he is relying upon the demand notice which is to the effect that he was working with the employer since 18th February, 1989 as Secretary and has not given any chance of complaint during the tenure of period of his services but the management terminated the services of the workman on 29th June, 1991 without assigning any reason or reasonable cause, therefore, the above said termination is absolutely illegal unwarranted and against the principle of natural justice. The workman was appointed on the permanent post and he is entitled to be heard before giving any sort of punishment to him. At the time of termination no notice was given to the workman, no enquiry was held by the management and no notice was sent in prescribed form to the Government and no charge-sheet was given to the workman nor was paid retrenchment compensation. Some junior person are also working in the office of the management. The management has not adopted the procedure of 'first come last go' in this case was the provisions of Section 25-G & H of the Industrial Disputes Act have been contravend. Hence the workman has filed the demand notice that he is liable to be reinstated with full back wages and with continuity of service.

3. The management has filed the written statement that the workman was retrenched in accordance with law after full compliance of section 25-F of the Industrial Disputes Act, 1947 as would be clear from the copy of the retrenchment order attached. The workman has no cause of action; the workman is estopped by his own act and conduct. The workman was appointed as Secretary on purely *ad hoc* basis and was given periodic extenions and hence the

claim of the workman is liable to be rejected.

4. Replication was not filed by the workman. On the pleading of the parties, the following issues were framed :—

- (1) As per terms of reference ?
- (2) Whether the workman was validly retrenched ?
- (3) Whether the workman has no cause of action ?
- (4) Whether the workman is estopped by his act and conduct ?
- (5) Relief.

5. My findings on the above issues with reasons thereof are as under :—

## ISSUE NO. 1 :

6. The workman has come into witness box as WW-1. The management has examined Shri Mehtab Singh as MW-1. The evidence of the parties was not present and was closed by the Court orders.

7. Shri Mehtab Singh MW-1 admitted that the workman was appointed for 89 days in the year 1989 and he was removed from the job with effect from 29th June, 1991. Before removal he was given the retrenchment compensation, notice pay and was paid pay of Rs. 2273-35 paise which is due to him. Mehtab Singh admitted that there has been no complaint of the management against the workman and his work has been satisfactory. He also admitted that he is not having the record, showing that meeting was called for the purpose and there is no need of permission of the Co-operative Society, Chandigarh to give retrenchment compensation. He also admitted that there was held no enquiry and he was not given any opportunity of hearing and he was also not given the charge-sheet. He admitted that after removal of the workman some other persons were appointed by advertisement but after removal of the workman, no notice of surplus staff was displaced. He also admitted that he has not having the record to show that the staff of the management was surplus and the workman was never informed that advertisement has been published in the Newspaper.

8. It is proved from the evidence of the Mehtab Singh MW-1 that the workman has been working with the respondent/management for more than 240 days in a year as admitted that he was appointed in the year 1989 and was removed from the job in the year 1991 though he was appointed for temporary for 89 days in terms.

It is settled law that any person had worked for 240 days in a year and whether he was a *ad hoc* employee, temporary employee or daily wager. The law does not distinguish between daily wager *ad hoc* employee or permanent employee. The only condition is that the workman had worked for about 240 days in a year and there is work left with the management or the management employ other persons after removal of the workman and particularly no notice was given to the workman the said termination can be illegal.

9. Section 25-F contains the conditions precedent to retrenchment of workman as laid down that any workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice ;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the official Gazette).

10. Section 25-G of the Industrial Disputes Act is laid down the procedure for retrenchment that where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workman in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman. Section 25-G does not play part in decision in this case as there is no pleading by the workman that he was not the last person to be appointed by the management.

11. Section 25-H of the Industrial Disputes Act says that where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity (to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons.

12. It is proved from the statement of Mehtab Singh that no notice to the workman was given while applying other persons which is clear violation and contravention of Section 25-H and to which the workman is entitled to the benefits.

13. The management has not able to prove that it had given the retrenchment, one month notice pay and as not complied with Section 25-F of the Industrial Disputes Act. The management also have not complied with Section 25-H of the Industrial Disputes Act and as such I hold that the workman is entitled to reinstated on the job, so I decide this issue in favour of the workman.

#### ISSUES NOS. 2 TO 4 :

14. All these issues are not pressed or argued hence I decide all the issues against the management.

#### ISSUE NO. 5 (RELIEF) :

15. In view of my findings on the above issues I accept the reference petition of the workman and direct the management to re-employ him with 50 per cent (FIFTY) of back wages alongwith continuity of services. The reference is answered and returned accordingly, however, the parties are left to bear their own costs.

The 6th December, 1994.

P. L. KHANDUJA,  
Presiding Officer,  
Industrial Tribunal, Labour  
Court, Rohtak.

Endorsement No. Reference No. 33-92/2964, dated the 15th December, 1994.

Forwarded. (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA.  
Presiding Officer.  
Industrial Tribunal, Labour  
Court, Rohtak.